UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/82
16 January 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 13 of the provisional agenda

STATUS OF THE INTERNATIONAL CONVENANTS ON HUMAN RIGHTS

Question of the death penalty

Report of the Secretary-General submitted pursuant to Commission resolution 1997/12

CONTENTS

	Paragraphs	Page
Introduction	1 - 8	2
I. CHANGES IN LAW AND PRACTICE	9 - 18	3
A. Countries which have abolished the death penalty since 1 January 1996	11	3
B. Countries restricting the scope of the death penalty or limiting its use since 1 January 1996	12 - 13	4
C. Countries ratifying international instruments since 1 January 1996 that provide for the abolition of the death penalty	14 - 15	4
D. Countries reintroducing the use of the death penalty, extending its scope or resuming executions since 1 January 1996	16 - 17	4
II. STATUS OF THE DEATH PENALTY WORLDWIDE AS AT DECEMBER 1997	18	5
III. CONCLUSIONS	19 - 20	10
Annex: Information received from States		11

GE.98-10209 (E)

Introduction

1. In its resolution 1997/12 (paragraph 6) the Commission on Human Rights requested the Secretary-General to submit to the Commission a yearly supplement on changes in law and practice concerning the death penalty worldwide to his quinquennial report on capital punishment and implementation of the Safeguards guaranteeing the protection of the rights of those facing the death penalty. The Secretary-General was further requested to consult with Governments, specialized agencies and intergovernmental and non-governmental organizations.

2. The quinquennial reports on capital punishment and implementation of the Safeguards guaranteeing the rights of those facing the death penalty referred to in Commission on Human Rights resolution 1997/12 have been prepared under the auspices of the Centre for International Crime Prevention at the United Nations Office at Vienna (formerly the Crime Prevention and Criminal Justice Division of the Secretariat). To date, five reports have been submitted, the most recent in 1995 (E/1995/78). A report of the Secretary-General on this subject was also submitted to the Commission on Crime Prevention and Criminal Justice at its fifth session in 1996 (E/CN.15/1996/19), which consolidated the information contained in the fifth quinqennial report with additional information received up to March 1996.

3. The quinquennial report is prepared on the basis of a detailed questionnaire sent to States. In addition to setting out the data received from States responding to the questionnaire, the report also draws on other available data including current criminological research, and information from specialized agencies and intergovernmental and non-governmental organizations.

4. The latest quinquennial report provides information on a number of issues regarding the death penalty in countries worldwide. This information includes changes in the status of the death penalty, numbers of death sentences carried out, ratification of international instruments restricting the scope of the death penalty, and the types of crimes for which the death penalty is provided. Pursuant to Economic and Social Council resolution 1989/64, the fifth quinquennial report included information regarding the implementation of the Safeguards guaranteeing protection of the rights of those facing the death penalty, thus combining the reports on the death penalty with previous reports on the implementation of the Safeguards to the former Committee on Crime Prevention and Control. The Safeguards include provisions relating to the types of crimes for which the death penalty might be imposed, persons whom should be exempt from the death penalty (e.g. children and the mentally disabled), and fair trial guarantees for those facing a possible sentence of death.

5. Pursuant to Commission on Human Rights resolution 1997/12, the Secretary-General requested information from all States on changes in law and practice concerning the death penalty. A similar request for information was sent to specialized agencies and intergovernmental and non-governmental organizations. Information was received from the following States: Brazil, Cuba, Cyprus, Germany, Italy, Lebanon, Mexico, Philippines,

Russian Federation, Sweden, Turkey, United Kingdom and United States of America. The information received from States is set out in annex I to this report.

6. The present report will focus only on changes in law and practice concerning the death penalty. Information regarding the extent to which the Safeguards are not respected in practice in particular countries is often brought to the attention of the Special Rapporteur on extrajudicial, summary or arbitrary executions and included in his reports to the Commission on Human Rights.

7. Resolution 1997/12 asks for a "yearly supplement". However, it has been decided to include in this report information on changes in law and practice which have taken place in the past two years, that is from January 1996 through December 1997. This decision is based on the fact that the last quinquennial report, published in March 1996, included information up to the end of 1995. Including both 1996 and 1997 in the reporting period for the present report ensures that, at least as regards the information provided, there are no gaps in coverage since the last quinquennial report.

8. Following the practice adopted in the quinquennial reports, countries are classified as abolitionist, abolitionist de facto or retentionist. Countries that do not contemplate the death penalty in their laws, either for any crimes (whether ordinary crimes or crimes in wartime or other exceptional circumstances) or for ordinary crimes only, are regarded as abolitionist. Countries that retain the death penalty for ordinary crimes but have not executed anyone during the last 10 years or more are considered abolitionist de facto. All other countries are defined as retentionist, meaning that the death penalty is in force and executions do take place, although in many retentionist countries such executions might be quite rare.

I. CHANGES IN LAW AND PRACTICE

9. Changes in law and practice concerning the death penalty cover a number of different issues. Changes in law include new legislation abolishing or reinstating the death penalty, or restricting or expanding its scope, as well as ratifications of international instruments that provide for abolition of the death penalty. Changes in practice cover non-legislative measures which show a significant new approach regarding the use of the death penalty; for example, countries which, though retaining the death penalty, announce a moratorium on its application, or after a de facto moratorium, resume executions after many years. Such changes might also include significant measures taken to commute death sentences.

10. Based on the information received, the following changes in law and practice can be reported.

A. Countries which have abolished the death penalty since 1 January 1996

11. In August 1996 Belgium abolished the death penalty for all crimes; the last execution in Belgium took place in 1950. Poland abolished the death penalty for all crimes in July 1997 when the President of Poland signed into

law a new Penal Code which came into effect on 1 January 1998. In November 1997 Georgia abolished the death penalty for all crimes; the President of Georgia had announced a moratorium on the use of the death penalty in December 1996.

B. Countries restricting the scope of the death penalty or limiting its use since 1 January 1996

12. In the Russian Federation the number of crimes providing for the death penalty was reduced from 27 to 5 when a new Criminal Code entered into force in January 1997, and a bill providing for a moratorium on the application of the death penalty was put before the State Duma.

13. Significant changes in practice occurred in Malawi, where in July 1997 the President commuted all death sentences and pledged not to sign any execution orders during his term in office. Also, in Albania in June 1996 the President of the Parliament announced, in a signed declaration in preparation for Albania's entry into the Council of Europe, that Albania would put into place a moratorium on executions until the death penalty was abolished.

C. Countries ratifying international instruments since 1 January 1996 that provide for the abolition of the death penalty

14. There are three international instruments in force which commit States parties to them to not having the death penalty. They are: the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at abolition of the death penalty; Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty; and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Protocol No. 6 concerns the abolition of the death penalty in peacetime, whereas the other two protocols provide for the total abolition of the death penalty but allow States wishing to do so to retain the death penalty in wartime.

15. In the reporting period two States acceded to the Second Optional Protocol, Greece in May 1997 and Colombia in August 1997. Two States ratified Protocol No. 6 to the European Convention, Andorra in January 1996 and the former Yugoslav Republic of Macedonia in April 1997, and two States, the Russian Federation and Ukraine, signed that Protocol in 1997. Brazil ratified the Protocol to the American Convention in August 1996.

D. Countries reintroducing the use of the death penalty, extending its scope or resuming executions since 1 January 1996

16. There is no information that, in the reporting period, any countries which were abolitionist had decided to reintroduce the use of the death penalty. Regarding extension of the scope of the death penalty, it was reported that in June 1996 the General People's Congress in the Libyan Arab Jamahiraya extended the death penalty to crimes such as smuggling of drugs and alcohol and illegal trade in foreign currencies. It was also reported that in

March 1997 Pakistan extended the death penalty to the crime of gang rape. The Philippines provided information that in March 1996 the law was changed to provide for execution by lethal injection.

17. It was also reported that at least 4 abolitionist de facto countries (countries retaining the death penalty but where no executions have been carried out for at least 10 years) resumed executions in the reporting period. In Bahrain the first execution since 1977 was carried out in March 1996 when a man was executed by firing squad. In Guatemala the first executions in 13 years were carried out in September 1996 when 2 men were executed by firing squad. In the Comoros a man was executed by firing squad in September 1996, making his the first execution since 1975. And in Burundi the first executions in 16 years were carried out in July 1997 when 6 men were executed by hanging.

II. STATUS OF THE DEATH PENALTY WORLDWIDE AS AT DECEMBER 1997

18. The latest quinqennial report includes a number of tables showing the status of the death penalty worldwide. This section reproduces some of these tables and updates them to include developments in 1996 and 1997, as well as making changes where additional information has become available.

Table 1. List of retentionist countries a/

Afghanistan
Albania
Algeria
Antigua and Barbuda
Armenia
Azerbaijan
Bahamas
Bahrain
Bangladesh
Barbados
Belarus
Belize
Benin
Botswana
Bulgaria
Burkina Faso
Burundi
Cameroon
Chad
China
Comoros
Cuba
Democratic People's Republic of Korea
Democratic Republic of the Congo
Dominica
Egypt
Equatorial Guinea
Eritrea
Estonia
Ethiopia
Gabon
Ghana
Guatemala
Guyana
India
Indonesia
Iran (Islamic Republic of)
Iraq
Jamaica
Japan
Jordan
Kazakhstan
Kenya
Kuwait
Kyrgyzstan
Lao People's Democratic Republic
Latvia
Lebanon
Lesotho
Liberia

Libyan Arab Jamahiriya
Lithuania
Malawi
Malaysia
Mauritania

Mongolia
Morocco
Myanmar
Nigeria
Oman

Pakistan
Qatar
Republic of Korea
Russian Federation
Saint Kitts and Nevis

Saint Lucia
Saint Vincent and the Grenadines
Saudi Arabia
Sierra Leone
Singapore

Somalia
Sudan
Swaziland
Syrian Arab Republic
Tajikistan

Thailand
Trinidad and Tobago
Tunisia
Turkmenistan
Uganda

Ukraine
United Arab Emirates
United Republic of Tanzania
United States of America
Uzbekistan

Viet Nam
Yemen
Yugoslavia
Zambia
Zimbabwe

Total: 90 countries

---

a/ The countries or territories listed retain the death penalty for ordinary crimes, and in most cases are known to have carried out executions during the past 10 years.

Table 2. List of countries that are totally abolitionist

Country or territory	Date of abolition	Date of abolition for ordinary crimes	Date of last known execution
Andorra	1990	..	1943
Angola	1992	..	..
Australia	1985	1984	1967
Austria	1968	1950	1950
Belgium	1996	..	1950
Bolivia	..	..	1974
Cambodia	1989	..	..
Cape Verde	1981	..	1835
Colombia	1910	..	1909
Costa Rica	1877	..	..
Croatia	1990	..	..
Czech Republic	1990	..	1989
Denmark	1978	1930	1950
Dominican Republic	1966	..	..
Ecuador	1906	..	..

Country or territory	Date of abolition	Date of abolition for ordinary crimes	Date of last known execution
Finland	1972	1949	1946
France	1981	..	1977
Georgia	1997	..	1995
Germany	1949/1987 a/	..	1949
Guinea-Bissau	1993	..	1986
Haiti	1987	..	1972
Holy See	1969	..	..
Honduras	1956	..	1940
Hungary	1990	..	1988
Iceland	1928	..	1830
Ireland	1990	..	1954
Italy	1994	1947	1947
Kiribati	..	..	*
Liechtenstein	1987	..	1785
Luxembourg	1979	..	1949
Marshall Islands	..	..	*
Mauritius	1995	..	1987
Micronesia (Federated States of)	..	..	*
Monaco	1962	..	1847
Mozambique	1990	..	1986
Namibia	1990	..	1988
Netherlands	1983	1870	1952
New Zealand	1989	1961	1957
Nicaragua	1979	..	1930
Norway	1979	1905	1948
Palau	..	..	..
Panama	..	..	1903
Paraguay	1992	..	1917
Poland	1997	..	1988
Portugal	1976	1867	1847
Republic of Moldova	1995	..	..
Romania	1990	..	1989
San Marino	1865	1848	1468
Sao Tome and Principe	1990	..	*
Slovakia	1990	..	1989
Slovenia	1991	..	1959
Solomon Islands	..	1966	*
South Africa	1995	..	1989
Spain	1995	1978	1975
Sweden	1973	1921	1910

Country or territory	Date of abolition	Date of abolition for ordinary crimes	Date of last known execution
Switzerland	1992	1937	1945
The former Yugoslav Republic of Macedonia	1991	..	1988
Tuvalu	..	..	*
Uruguay	1907	..	..
Vanuatu	..	..	*
Venezuala	1863	..	..

Total: 61 countries

Two dots (..) indicate that data are not available.
An asterisk (*) indicates that there have been no executions since the country gained its independence.

---

a/ The death penalty was abolished in the Federal Republic of Germany in 1949 and in the German Democratic Republic in 1987. The date of the last execution in the German Democratic Republic is not known.

Table 3. List of countries that are abolitionist for ordinary crimes only

Country	Date of abolition for ordinary crimes	Date of last execution
Argentina	1984	..
Brazil	1979	1855
Canada	1976	1962
Cyprus	1983	1962
El Salvador	1983	1973
Fiji	1979	1964
Greece	1993	1972
Israel	1954	1962
Malta	1971	1943
Mexico	..	1937
Nepal	1990	1979
Peru	1979	1979
Seychelles	..	*
United Kingdom of Great Britain and Northern Ireland	1965 a/	1964

Total: 14 countries

Two dots (..) indicate that data are not available.
An asterisk (*) indicates that there have been no executions since the country gained its independence.

---

a/ The death penalty was abolished in Northern Ireland in 1973.

Table 4. List of countries that can be considered abolitionist de facto a/

Country	Date of last known execution
Bermuda	1977
Bhutan	1964
Bosnia and Herzegovina	1975
Brunei Darussalam	1957
Central African Republic	1981
Chile	1985
Congo	1982
Côte d'Ivoire	..
Djibouti	*
Gambia	..
Grenada	1978
Guinea	1983
Madagascar	1958
Maldives	1952
Mali	1980
Nauru	*
Niger	1976
Papua New Guinea	1950
Philippines	1976
Rwanda	1982
Samoa	*
Senegal	1967
Sri Lanka	1976
Suriname	1984
Togo	..
Tonga	1982
Turkey	1984

Total: 27 countries

Two dots (..) indicate that data are not available.
An asterisk (*) indicates that there have been no executions since the country gained its independence.

---

a/ Countries that retain the death penalty for ordinary crimes but have not executed anyone during the last 10 years or more. It should be pointed out that in some of these countries death sentences continue to be imposed, and not all of the countries listed have a policy of regularly commuting death sentences.

Table 5. Summary of status of death penalty worldwide

Number of retentionist countries	90
Number of totally abolitionist countries	61
Number of countries abolitionist for ordinary crimes only	14
Number of countries that can be considered abolitionist	27

III. CONCLUSIONS

19. The last (fifth) quinquennial report affirmed the trend towards an increased pace of abolition, noted in the fourth quinquennial report, and concluded that "an unprecedented number of countries have abolished or suspended the use of the death penalty" (paragraph 94) and that from 1989 through 1995 "the pace of change may be seen to have been quite remarkable" (paragraph 96).

20. The information in the present report supports the conclusion that the trend towards abolition continues, with an increase in the figure of totally abolitionist countries from 58 to 61. There is also an increase in the number of countries ratifying international instruments that provide for the abolition of the death penalty. During the reporting period, no country classified as abolitionist (whether for all or only ordinary crimes) made legal changes to reintroduce the death penalty. However, four abolitionist de facto countries resumed executions. One retentionist country was reclassified as abolitionist de facto. The overall number of retentionist countries (90) remains the same.

ANNEX

Information received from States

Since many of the contributions from States provided detailed information on national law and practice regarding the death penalty, it has been decided to reproduce the contributions in extenso.

Brazil

[Original: English]
[25 August 1997]

1. The death penalty is prohibited by the Federal Constitution, except in case of declared war (article 5.XLVII.A). The Constitution foresees the possibility of pardon and reduction of all penalties, including the death penalty in a wartime situation, by the President of the Republic (article 84). Furthermore, the Constitution prohibits any amendment aimed at abolishing individual rights and guarantees, thus excluding the possibility of extending the application of the death penalty in the Brazilian penal system (article 60, paragraph 4).

2. The right to life is also ensured by the American Convention on Human Rights ("Pact of San José"), adhered to by Brazil on 25 September 1992. The "Pact of San José" forbids, in its article 4.3, the reintroduction of the death penalty in those countries that have abolished it.

3. As an additional step in its commitment to guarantee the right to life, the Brazilian Government ratified, on 13 August 1996, the Protocol to the American Convention on Human Rights on the abolition of the death penalty. At the moment of ratification, Brazil made the optional declaration foreseen in article 2, reserving the right to apply the death penalty under wartime circumstances, in accordance with international law and only for grave military crimes.

4. Notwithstanding the possibility, in theory, of application of the death penalty in case of war, the peaceful vocation of Brazil, the consolidation of a historical tradition of non-application of capital punishment (the last application goes back to 1855, under the Empire) and the commitments increasingly undertaken by the country in the international sphere have created a situation which could be described as one of abolition "de facto" of the death penalty.

Cuba

[Original: Spanish]
[30 September 1997]

1. In Cuba, the death penalty, as provided for in article 29.1 of the Penal Code (Act No. 62), is associated with very specific grounds and incommutable aggravating circumstances, which are mostly exceptional and which prevent the arbitrary or excessive imposition of this penalty. It is imposed only by the competent court, in conformity with the general legal principle of

proportionality between the punishment and the offence and with the provisions of paragraph 2 of Commission resolution 1997/12, in the most serious cases of the commission of the offences for which it is established, namely, murder, rape, homosexual acts with violence and some offences against State security.

2. The Cuban Government's basic premise is that the human being's inalienable right to life must be the subject not only of ethical-moral, but also of normative-legal-procedural treatment that is compatible with the very nature of this right, in particular, and with the affirmation of human dignity, in general.

3. The record of the treatment of this question in the United Nations shows the lack of an international consensus. Although the fifty-third session of the Commission on Human Rights adopted resolution 1997/12 by 27 votes to 11, with 14 abstentions, it will be recalled that, at the forty-ninth session in 1994, the General Assembly, the most universal and representative United Nations body, rejected a draft resolution on this subject by an overwhelming majority. Cuba has in fact always abstained whenever this question has been put to a vote in the United Nations.

4. More recently, during the substantive session of the Economic and Social Council in 1997, 32 countries, including Cuba, made a joint statement placing on record their reservations concerning draft resolution E/CN.4/1997/L.20 on this question.

5. Cuba is of the view that the question of the death penalty should be considered within the framework of the Commission on Crime Prevention and Criminal Justice so as to enable the deliberations on it to be based on technical-legal conceptions which, without disregarding ethical-legal interpretations, would, to a just and necessary extent, reflect the sovereign right of any State to characterize the offences carrying the death penalty in its legal system.

6. In the opinion of the Cuban Government, the evaluation of the question whether to maintain or abolish the death penalty in a particular country cannot overlook, inter alia, the right of victims, the right of the community to live in peace and security, the situation of the offence, national criminal policy in general or the feelings of the population.

7. In any event, Cuban legislation and practice in the implementation of this penalty are compatible with resolution 1997/12 in that the Penal Code expressly stipulates that the penalty may not be imposed on persons under the age of 20 or on women who committed the relevant offence while pregnant or who are pregnant at the time of conviction. In fact, it has never been imposed on a woman in Cuba.

8. The procedure established and applied in those cases in which the death penalty is called for comprises safeguards to guarantee protection of the rights of persons sentenced to this penalty.

9. Against death sentences there lies the remedy of appeal. If, after the time limit of five days, the accused has not lodged an appeal before the court which handed down the decision, it shall be deemed to have been lodged and

admitted ex officio. The appeal is heard by the corresponding chamber of the People's Supreme Court within 10 days and requires, as one of its essential preconditions, the reproduction of all the evidence submitted by the court of first instance.

10. If the death penalty imposed by the court of first instance is confirmed, it will submit the proceedings, through the President of the Supreme Court, to the Council of State, which within 10 days is empowered to exercise the right of pardon and to commute the death penalty, replacing it with the maximum prison term, i.e. 30 years. If after the period of 10 days there has been no express decision by the Council of State, it is understood not to have exercised the right of pardon; nevertheless, in Cuban judicial practice, the courts await the Council's express decision even after the time limit has passed, and only after receiving the Council's decision in writing do they proceed to execute it.

11. In all cases it is an essential requirement that the mental capacity of the accused shall be determined in order to guarantee that no provisions relating to incapacity established by article 20 of the Penal Code apply. Accordingly, the Governing Board of the Supreme Court issued instruction No. 150 of 1995, which established the methodological procedures for the forensic psychiatric test. This includes a detailed description of the mental state of the accused at the time when he committed the offence, and of any subsequent disorders, with a consequent decision on whether or not these disorders render the accused incapable of incurring criminal responsibility.

12. In the past few decades Cuba has pursued a reductionist policy with regard to the number of offences which carried the death penalty, but given the circumstances which it has experienced and continues to experience, the total abolition of the penalty is impracticable.

Cyprus

[Original: English]
[18 July 1997]

1. By virtue of the Constitution of the Republic of Cyprus (article 7, paragraph 2):

> "2. No person shall be deprived of his life except in the execution of a sentence of a competent court following his conviction of an offence for which this penalty is provided by law. A law may provide for such penalty only in cases of premeditated murder, high treason, piracy jure gentium and capital offences under military law."

2. Under the Criminal Code of Cyprus (Cap. 154, as amended) the death penalty was provided for the offence of premeditated murder (section 203), but this was abolished in 1983 by virtue of Law 86/83 and the sentence of life imprisonment was substituted therefor.

3. Though the death penalty was provided by the letter of the law until 1983 as a mandatory sentence in cases of conviction for premeditated murder, nevertheless, since the coming into force of the Constitution of

the Republic (16 August 1969) it has been enforced only once, in 1962. Thereafter, in the very few cases where the death penalty was imposed, this was commuted to life imprisonment by the exercise of the presidential prerogative of mercy. No death sentence has been imposed after 1978.

4. Under the Criminal Code of Cyprus the death penalty is still provided for the offences of "Treason by the law of England" (section 36), "Instigating invasion" (section 37) and "Piracy" (section 69). However, these offences have been rendered obsolete since the coming into force of the Constitution of Cyprus and it is considered that they (especially sections 36 and 69) have not survived article 188.1 of the Constitution, because these sections cannot be modified "as may be necessary to bring them into conformity with the Constitution".

5. Under the Military Criminal Code of Cyprus (Law 40/1964, as amended), the death sentence is still provided for a number of offences. By virtue of amending Law 91(I)/95 the death penalty, wherever provided in the Military Criminal Code, can only be imposed if the offence was committed in time of war and the Court has the right to impose life imprisonment or imprisonment for a lesser period if the circumstances so justified.

6. It should be noted that no death sentence has ever been imposed under the Military Criminal Code.

7. The Office of the Attorney-General of the Republic believes that the Republic of Cyprus should ratify Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Second Optional Protocol to the International Covenant on Civil and Political Rights. The competent authorities of Cyprus are presently proceeding with the revision of sections 36, 37 and 69 of the Criminal Code and a bill to that effect will shortly be presented to the Council of Ministers for approval and laid before the House of Representatives.

Germany

[Original: English]
[26 August 1997]

1. By virtue of article 102 of the Basic Law for the Federal Republic of Germany capital punishment has been abolished in the Federal Republic of Germany since 1949. All parliamentary groups in the German Federal Parliament, Federal Council and Federal Government continue in their unreserved support for this basic decision on human rights in the German Constitution, prohibiting the State from declaring a person - no matter how guilty he may be - to have lost his right to live. Justice is also done to the need for individual and public safety from serious criminal offences by having a criminal law system based on prison sentences. Hence, section 211 of the German Criminal Code imposes a mandatory sentence of life imprisonment for murder.

2. In addition, the Federal Government supports worldwide efforts by the United Nations, the Organization for Security and Cooperation in Europe and the Council of Europe to abolish capital punishment.

Italy

[Original: English]
[16 September 1997]

1. Italy first abolished the death penalty in 1889. It was reintroduced in 1926, during the fascist regime (1922-1943), for a number of crimes related to State security, then extended to various ordinary crimes in 1930 with the new Penal Code. In 1944, after the fall of the fascist regime, the death penalty was scrapped from the Penal Code, remaining however in force for some specific crimes related to the previous fascist regime and the Nazi occupation. A decree formally reintroduced the death penalty in 1945 as an exceptional and temporary measure for ordinary crimes. The last execution took place in March 1947, and Italy became a de facto abolitionist country. With the adoption of the new Constitution in 1948, the death penalty was abolished for ordinary crimes and for crimes provided for in the Military Penal Code in peacetime. Article 27 of the Constitution thus reads, "The death penalty is not admitted except in those cases provided for by wartime military legislation". Thus, a number of provisions of the 1941 wartime Military Penal Code retained the death penalty.

2. On 5 October 1994 the Italian Parliament adopted a bill by an overwhelming majority which abolished the death penalty as provided for in the wartime Military Penal Code. Italy thus became a fully abolitionist country and soon afterwards - December 1994 - ratified the Second Optional Protocol to the ICCPR aimed at the abolition of the death penalty. It should be noted that Italy was already a party (since 1989) to Protocol No. 6 to the European Convention on Human Rights, which abolishes the death penalty in peacetime. In August 1994 the Italian Parliament adopted a motion engaging the Government in a worldwide campaign for the abolition of the death penalty, in particular through action at the United Nations. It was in pursuance of this goal that Italy introduced a draft resolution at the forty-ninth session of the General Assembly on the question of the death penalty. The draft was not adopted. Subsequent to another motion by the Italian Parliament, the Italian Government introduced a draft resolution at the fifty-third session of the Commission on Human Rights. It is in the implementation of that resolution, adopted on 3 April 1997, that the present paper is being submitted.

3. As far as jurisprudence is concerned, it is worth noting that in June 1996 the Italian Constitutional Court ruled, in the Pietro Venezia case, that it violates the Constitution to extradite a person from Italy for an offence punishable with the death sentence by the requesting State even if the latter has explicitly committed itself to refraining from imposing the death penalty on that person.

4. At the present moment a bill is being discussed in Parliament to amend the above-mentioned article 27 of the Constitution so as to delete any reference to the death penalty.

Lebanon

[Original: Arabic]
[4 August 1997]

1. Lebanon is a constitutional and democratic State bound by the International Covenants and the Universal Declaration of Human Rights, the principles of which are applied by the Lebanese State in all fields without exception.

2. Article 8 of the Lebanese Constitution stipulates that, personal liberty being protected by law, no one may be killed, detained or arrested except in accordance with the provisions of the law, nor may any crime or penalty be designated or prescribed except by law.

3. Lebanese law does not permit any derogation from individual rights in the public interest except within narrowly defined limits which do not allow any infringement of the fundamental rights on which the essence of the human person is based in a civilized society such as that of Lebanon.

4. In Lebanon, prosecution is permitted only in accordance with the legal principles that guarantee protection of the lives, the livelihood and the human and social rights of individuals.

5. The courts and, in particular, the Department of Public Prosecutions diligently protect human rights and are making every effort to ensure that no right is violated and that the provisions of the law are not misapplied, disregarded or infringed.

The death penalty

6. The courts in Lebanon are guided by the principles laid down in the Penal Code. The Lebanese legislature deemed it appropriate to impose the death penalty for some serious offences. This is a matter which falls within its sole jurisdiction. However, it should be noted that, in Lebanon, the death penalty is carried out only after a long and meticulous public trial during which the right of defence is assured through appointed lawyers. It is well known that criminal proceedings pass through a series of stages, beginning with the preliminary investigations, followed by appearance before the Department of Public Prosecutions, the examining magistrate, the Indictment Division, the Criminal Court and, finally, the Court of Cassation, after which the Board of Pardons makes its recommendation before the enforcement decree is signed by the President of the Republic.

7. In Lebanon, the death penalty is imposed only on criminals who merit this penalty in view of the real threat that they pose to society and the public order which must prevail therein.

Non-amendment of the laws in force

8. In 1997, no amendments were made to the laws in force concerning the death penalty. During that year, the penalty of death by hanging was carried out on five convicted persons sentenced to that penalty in accordance with the legal provisions in force.

Mexico

[Original: Spanish]
[13 November 1997]

I. INTRODUCTION

1. The death penalty puts an end to the enjoyment of the right to life, which is the most fundamental human prerogative, as universally recognized in such legal instruments as the Universal Declaration of Human Rights. It is a cruel, inhuman and degrading sentence and has been demonstrated to serve absolutely no deterrent function, which is why Mexico has joined in international efforts towards its abolition and is in favour of all measures to that end.

2. Abolition of the death penalty will make it possible to exalt human dignity and the progressive development of human rights, which is why the struggle to restrict and ultimately eradicate it must be increasingly strenuous and must include implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty, accession to the international covenants and conventions aimed at its abolition and limiting the number of offences for which it can be imposed.

3. In addition, it is imperative to ensure respect for the life of all individuals, regardless of nationality and of any criminal responsibility with which the accused might be charged, since the death penalty is irreparable.

II. LEGAL FRAMEWORK IN MEXICO CONCERNING THE DEATH PENALTY

4. Mexico ensures respect for the life of individuals regardless of any criminal responsibility with which they might be charged, among other reasons because, in the opinion of the Mexican Government, if after being put to death the convicted persons proved to be innocent, the death penalty is an irreparable form of punishment.

5. As of the Constitution of 1857, the death penalty has been prohibited for the politically persecuted, a commonly accepted principle of all modern liberal Constitutions. The Constitution of 1917 limits the cases in which the death penalty may be applied, for example to particularly serious crimes which have always been considered destructive of the most important collective and individual assets and values, although in practice it is not carried out.

6. Nonetheless, it is important to point out that, while under article 22 of the Mexican Constitution it is still possible to impose the death penalty for certain crimes, such as high treason committed during a foreign war, parricide, murder with malice aforethought, arson, kidnapping, piracy and grave military offences, this provision is actually a dead letter, as its applicability is not regulated, and accordingly it is congruent with Mexico's opposition to the death penalty worldwide.

7. The death penalty is not included in the provisions of the Penal Code for the Federal District in respect of ordinary jurisdiction and for the

entire Republic in respect of Federal law, published in the Diario Oficial de la Federación on 31 August 1931, concerning punishments and security measures that may be imposed for the commission of crimes. Article 24 of the Code contains 17 such punishments and security measures, none of which is the death penalty. Accordingly, it may not be imposed in the Federal jurisdiction because there is no legal provision authorizing it, and also because article 22 of the Constitution does not call for any punishment aimed at taking away the life of the person who has committed the criminal conduct covered thereby.

8. None of the State penal codes calls for the death penalty, and the state constitutions of Chihuahua (article 5), Hidalgo (article 9), México (article 7), Michoacán (article 162) and Veracruz (article 10) even contain provisions expressly prohibiting it, thereby broadening the scope of the individual guarantee under article 22 of the Federal Constitution.

9. The death penalty exists solely in the realm of military justice. However, it should be stressed that the President of the Republic may commute it under article 176 (VI) of the Military Justice Code (CJM), if certain requirements are met.

10. As of 1 January 1934, with the entry into force of the current CJM, the death penalty could be imposed for such offences as high treason; however, on those occasions when it has been imposed, it has always been commuted to a sentence of imprisonment involving deprivation of liberty for 20 years, in conformity with article 130 of the Code.

Implementation of the safeguards guaranteeing the protection of rights

11. The implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty is a step towards its abolition, although when they do impose the penalty, certain countries do not take the internationally recognized safeguards into account. The CJM prescribes the following such safeguards.

12. Under article 145, the imposition of a death sentence that was not decreed under the provisions specifically applicable to the offence in question, and which was in force when the offence was committed, is prohibited. Under article 14 of the Constitution, in an a contrario interpretation set out by final ruling of the Supreme Court, a person facing the death penalty will receive a lighter sentence under laws enacted subsequent to the act and the sentence. Article 145 (III) of the Code states that when an irrevocable sentence imposing the death penalty has been pronounced and a law is enacted that changes that punishment, the death penalty shall be commuted in accordance with the new provision.

13. By virtue of article 18 of the Constitution and article 153 of the CJM, soldiers under 18 years shall be punished with half the corporal punishment prescribed for the offence committed. That provision makes the death penalty non-viable.

14. In the case of persons who have lost their reason, article 180 of the Code states that when the sentence provides for the execution of corporal

punishment and the sentenced person is mentally ill, the sentence will not be carried out, but will be executed if and when the person does recover his reason.

15. In conformity with articles 19, 20, 102 (A) and 104 (I) of the Constitution and article 601 of the CJM, the guilt of the accused must be reliably established, whether or not the punishment for the offence is the death penalty.

16. Under articles 14, 16 and 20 of the Constitution, as well as the provisions of the CJM, the death penalty may be imposed and, where appropriate, executed after the legal proceedings called for under those laws have been concluded and final judgement handed down. The guarantees of a fair trial referred to in article 14 of the International Covenant on Civil and Political Rights are covered by the above-mentioned provisions of the Constitution.

17. In the light of article 14 of the Constitution and article 826 of the Code, a person who has been sentenced to death has the right of appeal. However, the granting of that appeal is not obligatory in nature, but is the right of the sentenced person.

18. Under article 173 of the Code, the judicial authority may replace the death penalty when authorized to do so by the relevant provisions and may hand down a final judgement imposing one of several punishments. The provisions may apply in the case of an accused woman if the culprit is younger than 18 or older than 60 years and if more than 5 years have passed between the commission of the offence and the arrest of the culprit. A person who has been sentenced to death under article 176 of the Code may ask the President of the Republic to commute the sentence only if an irrevocable sentence has been rendered and if he or she is older than 60, if a punishment has been imposed that is incompatible with the personal circumstances of the offender or if it is in the public interest.

19. The Federal Executive may consider a pardon or may commute the sentence if a law has been enacted which changes the punishment or if a reasonable period of time has elapsed since the commission of the offence.

20. Under article 850 of the CJM, the death penalty may not be carried out if resolution is pending on any procedure or appeal called for by law and related to the substance of the question or to the request to commute the sentence or grant a pardon.

21. Article 142 of the Code establishes that the death penalty must not be aggravated by any circumstance that might increase the suffering of the sentenced person, whether before or during the execution. Article 852 of the Code states that the death penalty shall be carried out as established by disciplinary rules.

22. As may be observed, despite the fact that, under the Constitution, the death penalty is called for in the case of serious offences, Mexico is firmly opposed to its use. For this reason, the Government of Mexico at the international level, through its consular representatives, supports and defends Mexicans condemned to death.

III. MECHANISMS OF ASSISTANCE TO THOSE FACING THE DEATH PENALTY

23. The defence and protection of the rights and interests of all Mexicans abroad is one of the chief objectives of our foreign policy. In accordance with that objective, Mexican diplomatic and consular offices have a set of legal powers under both domestic and international law for carrying out their protective functions.

24. At the international level, particular attention should be drawn to the Vienna Convention on Consular Relations (1963), the Memorandum of Understanding on Consular Protection of United States and Mexican Nationals (1942) and other bilateral instruments, such as the General Treaty on Cooperation and Amnesty between Mexico and Spain (1990), which contain important provisions on cooperation for the protection of the nationals of both countries in places where neither country has diplomatic or consular offices.

25. The agency responsible for defending and protecting the rights and interests of Mexicans abroad is the Ministry for Foreign Affairs, which gives priority to cases involving compatriots who are facing, or might come to face, the death penalty, providing them with legal assistance. This function has to date been carried out only in the United States, as it is the only country where there are any Mexicans who have been sentenced to death.

26. In coordination with Mexican consulates, the National Human Rights Commission (CNDH) and other agencies of the Federal and state governments contribute to their defence by obtaining background information, interviewing family members, preparing specific studies and applying for various legal remedies, among other actions, depending on the specifics of each case.

27. The actions by the Government of Mexico on behalf of its citizens facing the death penalty are limited to ensuring that the judicial processes in which they are involved are in keeping with the law, and are in no sense intended to call into question the legal system of other countries. The Government of Mexico is not empowered to decide on the innocence or guilt of the accused, as that is the exclusive responsibility of the judges in the country in which the crimes were committed.

28. These actions are carried out primarily through the following mechanisms:

(a) Working Group for Death Penalty Cases. The Ministry of Foreign Affairs has established the Working Group for Death Penalty Cases, in which Ministry officials, such as the Legal Adviser and General Coordinator for Consular Affairs and Protection, participate, along with other officials involved in the field, including a high-ranking CNDH official, attorneys for

Mexicans facing the death penalty, other legal specialists on the subject and high-ranking officials from Mexican States with residents facing the penalty;

(b) Advisory Council for Death Penalty Cases. Active participants in the first Advisory Council, which was set up in Houston, Texas, include Ministry officials, the Mexican Consul-General in Houston, a CNDH representative, defence attorneys and human rights organizations;

(c) Consular notification in cases of Mexican nationals sentenced to death. The 1963 Vienna Convention on Consular Relations is a multilateral legal instrument that provides the framework for the activity of one country's consular representatives on another's territory. It also lays down the rights of aliens who are being detained because of their possible responsibility for the commission of a crime. Article 36 of the Convention makes it obligatory for the receiving State, should an alien be detained because of his possible criminal responsibility, to inform the closest consular or diplomatic office, in order that the individual may receive assistance from the moment he is apprehended until the conclusion of any judicial proceedings he must undergo. The observance of this obligation is extremely important, because it guarantees adequate consular assistance to a foreign national who is detained on Mexican territory or to a Mexican national detained on the territory of another State. Unfortunately, there is an important difference between the legal systems of countries with respect to criminal penalties that may be imposed when it is decided that the detainee has committed a serious offence. In the United States, specifically in the state of Texas, there is the death penalty. In that regard, Mexico has argued that consular notification is an obligation that must be fulfilled without exception, and reciprocally, by both countries, should any individual be detained on the territory of a country other than his own. This notification is so important that it can be considered on the same level as the Miranda warning, in that it offers the detainee the possibility of having his rights explained to him in his own language through consular assistance and to be assisted in understanding the workings of the United States legal system and the consequences of his possible responsibility for the commission of the crime with which he is charged. The Government of Mexico is, therefore, greatly concerned by the recent execution of two Mexican nationals, as both cases involved non-compliance with article 36 of the Vienna Convention: the two individuals were denied the right to communicate with their consular representative and were unable to receive proper consular support and assistance. This problem of non-compliance is actually much greater in scope, as there are 35 Mexican nationals in the United States who have been sentenced to death and denied the opportunity to advise their consul of their detention. The Vienna Convention was violated in all those cases. In that connection, Mexico has repeatedly expressed its opinion on non-compliance with the Vienna Convention on Consular Relations before United States courts, in most cases through amicus curiae briefs. Those courts have not considered the arguments, thereby in practice nullifying the obligation under article 36 to provide consular notification. The Government of Mexico is acquainted with the position of the United States Department of State with regard to its direct appearance before that country's courts, and has received the Department's apologies for the executions of Mexican nationals. Nevertheless, in view of the seriousness of the problem, a mere apology is considered inadequate as the sole response. Given the systematic non-compliance by the competent authorities of the United States

with article 36 of the Convention, in connection with the Mexican nationals sentenced to death, the Government of Mexico has asked the Department of State to take concrete steps to guarantee the observance of the consular notification requirement, by virtue of which the Department itself is the authority responsible for fulfilling United States obligations under the Convention. Due compliance will certainly be beneficial to bilateral relations between the two countries. The Government of Mexico has taken a number of actions, either directly or through attorneys representing Mexican citizens in their trials, to guarantee fulfilment of that obligation, of which the following should be highlighted:

(i) Diplomatic action. Through direct contacts and diplomatic notes to the United States Department of State, and at times through actions undertaken before state governors and authorities at several levels, the competent authorities have been repeatedly urged to comply with their obligation under article 36 of the Convention on Consular Relations;

(ii) Action before judicial authorities. Using a variety of remedies, frequently including the above-mentioned amicus curiae - which means that someone, without being a direct party to a trial, can provide relevant information to the court - the importance of consular notification has been stressed, as its absence has a direct and irreversible impact on Mexican nationals in detention;

(iii) Action by consuls in coordination with attorneys representing Mexicans facing the death penalty. In coordination with the various attorneys representing Mexican nationals, during the various stages of death penalty proceedings, our consuls have pointed out the absence of consular notification and its serious implications. In addition to the actions undertaken by the lawyers before the courts, lawyers have been encouraged to intercede with the Department of State and other administrative authorities in the United States,

(d) Anti-Death Penalty Programme. In accordance with the humanitarian principles that are universally recognized in Mexico, the CNDH, in coordination with the Ministry of Foreign Affairs, instituted this programme in 1992, in order more intensely to combat the imposition of the death penalty wherever it may exist. The programme is intended to carry out actions to support and defend Mexicans facing the death penalty in United States prisons, while respecting the judicial system, on the understanding that the CNDH may never intervene in jurisdictional matters, whether in Mexico or abroad. In that connection, the CNDH follows up on cases of Mexicans against whom criminal proceedings that may result in the death penalty have been instituted. Within the framework of this programme, the CNDH maintains a case file on 40 Mexicans facing the death penalty, or against whom a criminal trial is under way which may result in the death penalty, in the United States.

IV. FUTURE ACTION

29. Advisory councils will be set up in the near future, similar to those operating in Houston, in those Mexican consular districts where there are Mexicans facing the death penalty.

30. Our Government maintains a firm stand against the death penalty, as has been demonstrated through the support and defence of Mexicans facing the penalty, whether by paying them frequent visits, providing them with legal advice and support for their defence or maintaining close relations with their attorneys and families, who are also being supported. The Government of Mexico will pursue, and strengthen, its action so as to ensure that detainees enjoy their right to adequate defence, without prejudice to the legal system of the country in which they are being tried.

31. It is also noteworthy that, under article I, paragraph (2), of the Mexico-United States Treaty on the Execution of Penal Sentences, "Sentences imposed in the United States of America on nationals of the United Mexican States may be served in penal institutions of the United Mexican States...." Under article IV, paragraph (6), "No offender shall be transferred unless either the sentence which he is serving has a specified duration, or such a duration has subsequently been fixed by the appropriate administrative authorities". This means that the Government of Mexico may not hand over a detainee who risks being sentenced to death in the United States, given that, as already stated, the sentence must have a specified duration. Similarly, the Government of Mexico will insist before its United States counterpart that in those cases where the death sentence is handed down against a Mexican national, that individual should be transferred to Mexico to serve his sentence.

Philippines

[Original: English]
[29 September 1997]

1. Following the restoration of the death penalty pursuant to the enactment of Republic Act 7659, otherwise known as "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws and for Other Purposes", the following provisions of the Revised Penal Code, as amended, relating to certain specific crimes were amended, as follows:

(a) In article 114 on the crime of treason, - the minimum penalty was increased from reclusión temporal to reclusión perpétua and the maximum penalty to death, and the fine was increased to P 100,000;

(b) In article 123 on qualified piracy, the minimum penalty was also increased from reclusión temporal to reclusión perpétua or death;

(c) In article 246 on parricide the original penalty of reclusión perpétua or death was maintained;

- - - -

(d) In article 248 on murder, the minimum penalty was increased from reclusión temporal to reclusión perpétua and the maximum penalty to death;

(e) In article 255 on infanticide, the minimum penalty was increased from correctional to prisión mayor to its medium and maximum periods if the crime was committed by the mother of the child for the purpose of concealing her dishonour, and the minimum penalty was increased from prisión mayor to reclusión temporal if the crime was committed by the maternal grandparents or either of them;

(f) In article 267 on the crime of kidnapping and serious illegal detention, the condition on the number of days during which the victim was detained was reduced from five days to three days. Furthermore, the death penalty shall be imposed not only when death results but also when the victim was subjected to torture or dehumanizing acts;

(g) In article 294 on robbery with violence against or intimidation of persons, the original penalty was maintained;

(h) In article 320 on destructive arson, the penalty was increased from reclusión temporal to reclusión perpétua or death;

(i) In article 335 on the crime of rape, the death penalty shall be imposed in the following attendant circumstances:

(i) When the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

(ii) When the victim is under the custody of the police or military authorities;

(iii) When the rape is committed in full view of the husband, parents, or any of the children or other relative within the third degree of consanguinity;

(iv) When the victim is a religious or a child below seven years of age;

(v) When the offender knows that he is afflicted with AIDS;

(vi) When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency;

(vii) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

2. A new article/provision is incorporated after article 211 of the aforesaid Revised Penal Code, as amended, which now categorizes qualified bribery as a heinous crime punishable by reclusión perpétua or death and which reads as follows:

"Art. 211-A. Qualified Bribery. - If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by reclusión perpétua and/or death in consideration of any offer, promise, gift or present, he shall suffer the penalty for the offence which was not prosecuted.

"If it is the public officer who asks or demands such gift or present, he shall suffer the penalty of death."

3. Certain special laws relating to the offence of plunder and to prohibited drugs have also been amended by virtue of the restoration of the death penalty as follows.

4. Section 2 of Republic Act No. 7080 (An Act Defining and Penalizing the Crime of Plunder) has been amended to read:

"Sect. 2. Definition of the Crime of Plunder; Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in section I (d) hereof in the aggregate amount or total value of at least fifty million pesos (P 50,000,000) shall be guilty of the crime of plunder and shall be punished by reclusión perpétua [or] death."

Prior to such amendment, in order for a public officer to be liable for plunder he must have accumulated or amassed ill-gotten wealth in the aggregate amount or total value of at least 75 million pesos and was punishable solely by life imprisonment with perpetual absolute disqualification from holding any public office, or with death.

5. Sections 3, 4, 5, 7, 8 and 9 of article II of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972, were also amended to read as follows:

"Sect. 3. Importation of Prohibited Drugs. - The penalty of reclusión perpétua [or] death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall import or bring into the Philippines any prohibited drug."

Prior to the amendment of the Dangerous Drugs Act of 1972, the fine imposed ranged only from P 20,000 to P 30,000. However, with the enactment of R.A. No. 7659, the fine was increased from P 500,000 to P 10,000,000. Likewise with other offences related to prohibited drugs such as (a) sale, administration, delivery, distribution and transportation of prohibited drugs (section 4); (b) maintenance of a den, dive or resort for prohibited drug users (section 5); (c) manufacture of prohibited drugs (section 7); (d) possession or use of a prohibited drug (section 8); and (e) cultivation of plants which are sources of prohibited drugs.

6. Sections 14, 14-A and 15 of article III of the Dangerous Drugs Act of 1972, which relate to the importation, manufacture and sale, administration, dispensing, delivery, transportation and distribution of regulated drugs, were also amended to increase the fine imposed to from P 500,000 to P 10,000,000 instead of merely from P 20,000 to P 30,000.

7. A new provision was also incorporated after section 15 of article III of the Dangerous Drugs Act of 1972, which makes the maintenance of a den, dive or resort for regulated drug users also punishable by reclusión perpétua or death and a fine ranging from P 500,000 to P 10,000,000.

8. Section 16 of article III of the Dangerous Drugs Act was also amended to increase the penalty for possession or use of regulated drugs from mere imprisonment ranging from six months and one day to four years and a fine ranging from only P 600 to P 4,000 to reclusión perpétua or death and a fine ranging from P 500,000 to P 10,000,000.

9. Section 20, article IV of the Dangerous Drugs Act prior to its amendment only provided for the confiscation and forfeiture of the proceeds or instruments of the crime, but with its amendment pursuant to the restoration of the death penalty, it provides for the application of the penalties mentioned earlier with respect to sections 3, 4, 7, 8 and 9 of article II and sections 14, 14-A, 15 and 16 of article III of the Dangerous Drugs Act if the dangerous drug involved is in any of the following quantities:

"(1) 40 grams or more of opium;

(2) 40 grams or more of morphine;

(3) 200 grams or more of 'shabu' or methyl amphetamine hydrochloride;

(4) 40 grams or more of heroin;

(5) 750 grams or more of Indian hemp or marijuana;

(6) 50 grams or more of marijuana resin or marijuana resin oil;

(7) 40 grams or more of cocaine or cocaine hydrochloride; or

(8) In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose.

"Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall range from prisión correccional to reclusión perpétua depending upon the quantity."

10. Any apprehending or arresting officer who misappropriates or misapplies or fails to account for seized or confiscated dangerous drugs or plant sources of dangerous drugs or proceeds or instruments of the crime shall after conviction be punished by the penalty of reclusión perpétua or death and a fine ranging from P 500,000 to P 10,000,000.

11. A new section was incorporated after the section 20 of the Dangerous Drugs Act to read as follows:

> "Sect. 20-A. Plea-Bargaining Provision. - Any person charged under any provision of this Act where the imposable penalty is reclusión perpétua [or] death shall not be allowed to avail of the provision on plea-bargaining."

12. Finally, section 24 of the said Act was amended to penalize government officials and employees, officers and members of police agencies and armed forces with the maximum penalty provided in sections 3, 4(1), 5(1), 6, 7, 8, 11, 12 and 13 of article II and Sections 14, 14-A, 15(1), 15-A(1); 16 and 19 of article III if they are found guilty of planting dangerous drugs on the person or in the immediate vicinity of another as evidence to implicate the latter.

13. Section 14 of Republic Act No. 6529, as amended, otherwise known as the Anti-Carnapping Act of 1972, was amended to penalize by reclusión perpétua or death in the event the owner, driver or occupant of the carnapped motor vehicle was raped in the course of the commission of the carnapping or on occasion thereof. Prior to such amendment, the only circumstances when the maximum penalty could be imposed is when the owner, driver or occupant of the carnapped motor vehicle was killed.

14. Article 47 of the Revised Penal Code, as amended, which deals with cases when the death penalty cannot be imposed, has been amended to exempt guilty persons below 18 years of age at the time of the commission of the crime. The old law provided only for guilty persons who were more than 70 years of age to be exempted.

15. Article 62 of the Revised Penal Code, as amended, which provides for the effects of the attendance of mitigating or aggravating circumstances and of habitual delinquency, has been amended to bolster the Government's efforts to combat organized/syndicated crime groups and to curtail abusive public officers from taking advantage of their position. Thus, article 62 provides in paragraph 1, subparagraph (a), that:

> "When in the commission of the crime, advantage was taken by the offender of his public position, the penalty to be imposable shall be in its maximum regardless of mitigating circumstances.
>
> "The maximum penalty shall be imposed if the offence was committed by any person who belongs to an organized/syndicate crime group.
>
> "An organized/syndicated crime group means a group of two or more persons collaborating, confederating or mutually helping one another for purposes of gain in the commission of any crime."

16. What can be considered a significant change or practice concerning the death penalty is the method by which the death sentence is executed. In the past, death sentences pursuant to Philippine laws, specifically article 81 of the Revised Penal Code, were usually executed by electrocution. This was

amended by section 24 of Republic Act No. 7659 to gas poisoning. However, with the enactment of Republic Act No. 8177, death sentences shall now be executed by lethal injection.

17. The Secretary of Justice has promulgated rules and regulations to implement R.A. 8177 to ensure the orderly and humane execution of the death penalty by lethal injection. The principle to be observed in the implementation of the said rules and regulations are: (a) there shall be no discrimination in the treatment of a capital convict on account of race, colour, religion, language, politics, nationality, social origin, property, birth or other status; (b) in the execution of a death penalty, the convict shall be spared unnecessary anxiety or distress; and (c) the religious belief of the convict shall be respected.

18. Likewise, execution by lethal injection shall not be inflicted upon a woman within three years following the date of sentence or while she is pregnant, nor upon any person over 70 years of age. In the latter case, the death sentence shall be commuted to the penalty of reclusión perpétua with the accessory penalties provided for in article 40 of the Revised Penal Code, as amended.

Russia

[Original: Russian]
[8 August 1997]

1. Article 20 of the Constitution of the Russian Federation provides that "until its abolition, the death penalty may be imposed by federal law as an exceptional penalty for particularly serious crimes against life, subject to the right of the accused to have his case tried in a court of law before a jury". This penalty does not apply to women, minors or men aged 65 or over at the time of sentencing.

2. In recent years, there has been a steady decrease in the number of death penalties handed down by the Russian courts. Thus, whereas in 1961 a total of 2,159 persons were sentenced to death, the number was 415 in 1981, 159 in 1992, 157 in 1993, 160 in 1994 and 141 in 1995.

3. The institution of pardon for persons sentenced to capital punishment is widely applied. A total of 149 persons were pardoned in 1993, 134 in 1994 and 5 in 1995.

4. The new Criminal Code of the Russian Federation, which has been in force since 1 January 1997, has significantly reduced the number of crimes for which capital punishment applies - from 27 under the previous Criminal Code to 5:

Article 105, section 2 Homicide with aggravating circumstances;

Article 277 Attempt on the life of a State or public figure;

Article 295 Attempt on the life of a person engaged in the administration of justice or in preliminary investigations;

Article 317 Attempt on the life of an official of a law enforcement agency;

Article 357 Genocide.

5. On 16 May 1996, the President of the Russian Federation issued Decree No. 724 entitled "The gradual reduction in the application of the death penalty in connection with Russia's entry into the Council of Europe".

6. Since August 1996, no death sentences have been carried out in the Russian Federation.

7. On 16 April 1997, the Russian Federation signed Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which provides for the abolition of the death penalty in peacetime.

8. The State Duma of the Russian Federation is considering a federal bill for a moratorium on the application of the death penalty.

9. The Government of the Russian Federation is examining a proposed government decree which will bring conditions of detention for persons sentenced to the death penalty into line with the requirements of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Sweden

[Original: English]
[10 July 1997]

1. Sweden welcomes the adoption by the Commission on Human Rights of the resolution on the question of the death penalty. Sweden hopes and believes this to be a first step towards the total abolition worldwide of this inhuman punishment.

2. The quinquennial report on the changes in law and practice concerning the death penalty, prescribed in the resolution, is a welcome means of keeping the question on the international human rights agenda.

3. In that context, Sweden would like to inform that it has completely abolished capital punishment. Chapter 2, section 4, of the Instrument of Government (the Swedish Constitution) reads: "There shall be no capital punishment."

4. Capital punishment was abolished for peacetime use in 1921 and for wartime use in 1973. The last death sentence was passed in 1910 and the last execution took place that same year.

Turkey

[Original: English]
[26 August 1997]

1. On 21 November 1990, the Turkish Grand National Assembly adopted Law No. 3679 introducing important amendments to the Turkish Penal Code. The said Law entered into force on 29 November 1990. In this framework, the death penalty for 27 different types of crime enumerated in articles 152, 217, 403, 406, 407, 418, 439 and 499 was abolished and replaced by lifetime imprisonment sentence.

2. Article 141 of the Penal Code was annulled by Law No. 3713 (Anti-Terror Law).

3. The death penalty is presently stipulated in article 16 of the Turkish Penal Code. The death penalty is applicable to crimes committed against the territorial integrity and national unity of Turkey. However, Turkey is de facto abolitionist; provisional article 1 of the Anti-Terror Law states that,

"For crimes committed until 8 April 1991,

"(a) death sentences shall not be executed and convicts shall be entitled to conditional release when they undergo 10 years of their sentences pursuant to section 19 of Law No. 647 on the execution of sentences;

"(b) conditional release shall be granted to those who undergo eight years thereof if they are sentenced to lifetime imprisonment;

"(c) the same privilege shall be available to those who serve one-fifth of their sentence in other freedom restricting sentences regardless of whether they are of good conduct or not.

"The periods spent under detention shall be taken into consideration in the determination of the above-mentioned periods.

"The terms of mitigation set forth under provisional section 2 of Law No. 647 on the execution of sentences shall not apply to these convicts."

4. No death penalty has been executed in Turkey since 1984.

United Kingdom of Great Britain and Northern Ireland

[Original: English]
[26 November 1997]

1. There has been no change in the position of the United Kingdom which remains as follows.

2. The United Kingdom has a long-standing policy of allowing a free vote in Parliament on the reintroduction of the death penalty for murder. Parliament has debated the reintroduction of the death penalty for murder on several occasions in recent years but has consistently rejected its reintroduction.

3. The death penalty is still an available penalty for the offences of treason, piracy with violence and certain armed forces offences, but no such penalty has been imposed since 1946 and is unlikely in practice to be imposed other than in times of war.

4. The question of whether capital punishment should be abolished is a matter which is solely the responsibility of individual Governments and Parliaments, taking into account their international commitments, the relevant provisions of international law and internally accepted standards.

United States of America

[Original: English]
[18 September 1997]

1. The sanction of capital punishment continues to be the subject of strongly held and publicly debated views in the United States. In a majority of states (currently 38 out of 50), voters have chosen through their freely elected officials to retain the death penalty for the most serious crimes (almost without exception, aggravated murder). At the federal level, Congress has mandated capital punishment for certain very serious Federal crimes. Under United States law, capital punishment is only carried out under laws in effect at the time of the offence and after exhaustive appeals.

2. The United States Supreme Court has held that the Eighth Amendment to the United States Constitution (which proscribes cruel and unusual punishment) does not prohibit capital punishment (Gregg v. Georgia, 428 US 153 (1976) (plurality opinion)). However, the death penalty is available for only the most egregious crimes and, because of its severity, warrants unique treatment that other criminal sentences do not require. First, it cannot be imposed even for serious crimes - such as rape, kidnapping, or robbery - unless they result in the death of the victim (Coker v. Georgia, 433 US 584 (1977); Enmund v. Florida, 458 US 782, 797 (1982); Eberheart v. Georgia, 433 US 917 (1977); Hooks v. Georgia, 433 US 917 (1977)). Moreover, that the crime resulted in death is not per se sufficient to trigger imposition of capital punishment; it is further required that the crime have attendant aggravating circumstances. These restrictions upon the imposition of the death penalty arise out of the constitutional requirement that the punishment not be disproportionate to the personal culpability of the wrongdoer, (Tison v. Arizona, 481 US 137, 149 (1987)), and the severity of the offence, (Coker v. Georgia, 433 US 584, 592 (1977) (death penalty is disproportionate punishment for crime of rape)).

3. United States law places special emphasis on due process protection for those accused of capital offences. The death penalty cannot be carried out unless imposed in a judgement issued by a competent court and subject to appellate review. Almost all of the 38 states whose penal codes include capital punishment statutes provide for both automatic review of each death sentence and automatic review of the conviction. Those states that do not mandate automatic review of capital sentences nevertheless authorize review when the defendant wishes to appeal. The fact that a state appellate court reviews each death sentence to determine whether it is proportionate to other sentences imposed for similar crimes safeguards against the possibility that capital punishment will be imposed capriciously and arbitrarily, i.e. in a manner constituting cruel and unusual punishment (Gregg v. Georgia, 428 US 153 (1976)). Typically, review is undertaken automatically as a matter of law regardless of the defendant's wishes and is conducted by the state's highest appellate court. In states not providing automatic review, the defendant can appeal the sentence, the conviction, or both. If an appellate court vacates either the sentence or the conviction, it may remand the case to the trial court for additional proceedings or for retrial. As a result of resentencing or retrial, it is possible for the death sentence to be reimposed. The United States Supreme Court has found that where a sentencing jury may impose capital punishment, the jury must be informed if the defendant is ineligible for parole; in other words, where a sentence of lifetime imprisonment could not result in parole (Simmons v. South Carolina, 114 S.Ct. 2187 (1994) (plurality opinion)).

4. In 1996 Congress passed the Anti-Terrorism and Effective Death Penalty Act, which introduced a series of improvements to federal criminal procedure, including a partial reform of the federal law governing habeas corpus petitions. The 1996 Act left in place the basic structure of federal law governing the imposition of capital punishment, setting forth specific circumstances under which federal courts will allow successive appeals of final orders issued in federal and state habeas corpus proceedings, and limiting the period of time within which federal courts must render final determinations of petitions for habeas corpus brought in capital cases.

5. Under the United States system, a state may not prohibit acts of executive clemency, including amnesty, pardon, and commutation of sentence (Gregg v. Georgia, 428 US 153, 199 (1976)). In a recent Supreme Court decision, Herrera v. Collins, 113 S.Ct. 853 (1993), the Court recognized the availability of executive clemency for persons facing the death penalty whose convictions have been affirmed, whose collateral appeal rights have been exercised and exhausted, and who thereafter present a newly articulated claim of factual innocence.

6. In addition to the limitations upon imposition of the death penalty described above, the ex post facto clause of the United States Constitution bars retroactive increases in the penalties available in criminal cases. The operation of this clause forbids the Government from imposing the death penalty on an offender for a crime that was not subject to capital punishment at the time it was committed.

7. The application of the death penalty to those who commit capital offences at the ages of 16 and 17 continues to be a subject of debate in the United States. Under United States law, capital punishment may be imposed on wrongdoers who were 16 or 17 years of age at the time of the offence. The

Supreme Court has held the imposition of capital punishment upon a person who was 15 years of age when he committed the offence to be unconstitutional (Thompson v. Oklahoma, 487 US 815 (1988) (plurality opinion)), but has approved under the Eighth Amendment the imposition of the death penalty on a wrongdoer who was 16 years of age at the time of the offence (Stanford v. Kentucky, 492 US 361 (1989)). Four of the nine Justices dissented in the latter case, contending that execution of an offender under 18 years of age is disproportionate and unconstitutional (Id. at 403). A more recent Supreme Court decision addressing the issue noted that of 36 states whose laws permitted capital punishment at the time of the decision, 12 declined to impose it on persons 17 years of age or younger, and 15 declined to impose it on 16-year-olds (Sanford v. Kentucky, 492 US 361 (1989)). Despite the legality of these juvenile capital sentences in some states, the execution of criminals who were 16 or 17 years old at the time they committed serious crimes resulting in death, however, is rare in the United States.

8. Both federal and state law provide significant protection against the trial, conviction and punishment of individuals with significant mental infirmities or disabilities. United States law prohibits the execution of individuals determined to be legally insane. In many, but not all, states the defendant cannot be held responsible if he reacted to an "irresistible impulse" or is incapable of acting responsibly by reason of mental or emotional disability. Many people with mental disabilities, however, are not legally insane. Some persons with mental disabilities have been found legally capable of resisting impulses and acting responsibly.

9. Nevertheless, no one, including persons with mental disabilities, can be forced to stand trial unless they are mentally competent. The standard for judging mental competence varies among separate jurisdictions within the United States. In general, a defendant must have known the nature and wrongfulness of the proscribed act of which he stands accused. Similarly, an individual cannot be executed unless he or she is both aware of the punishment and of the reason why the punishment is to be imposed. The legal standard for competence, together with the bar on the prosecution of the insane and the other defences mentioned above, limit significantly the prosecution of persons with mental disabilities. On rare occasions, however, persons with mental disabilities are judged competent to stand trial for capital offences under United States law. The execution of these defendants is very rare, because many states regard mental disability as an important mitigating factor to be considered during sentencing.

10. The issue of capital punishment remains a matter of great importance to the people of the United States. The status of capital punishment in the United States, under state and federal law, reflects the rights accorded and guaranteed to all individuals, including the accused, by our nation's Constitution and laws, and by the standards of international human rights law.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/82/Corr.1
20 March 1998

ENGLISH
Original: ENGLISH and FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Agenda item 13

STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Question of the death penalty

Report of the Secretary-General submitted pursuant to Commission resolution 1997/12

Corrigendum

Page 10, table 5

For Number of countries that can be considered abolitionist
read Number of countries that can be considered abolitionist de facto.

- - - - -